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5 *Additional Counsel Identified on Signature Page*

6 UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

7 COMMUNITY ASSOCIATION FOR  
8 RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
9 nonprofit corporation; FRIENDS OF  
TOPPENISH CREEK, a Washington  
10 nonprofit corporation; *and* CENTER FOR  
FOOD SAFETY, a Washington, D.C.  
11 nonprofit corporation,

12 Plaintiffs,

13 v.

14 DBD WASHINGTON, LLC, a  
Washington limited liability company;  
*and* SMD, LLC, a Washington limited  
15 liability company,

16 Defendants.

Case No.: 1:19-CV-03110-TOR

**STIPULATED PROTECTIVE  
ORDER**

17  
18 BEFORE THE COURT is the Parties' Stipulated Protective Order. Pursuant  
19 to Federal Rule of Civil Procedure 26(c), and it appearing to the Defendants that  
20 discovery in the above-captioned matter will involve the disclosure of confidential  
information, it is hereby stipulated by and between the Parties through their

1 respective counsel and ordered that the following Protective Order be entered to give  
2 effect to the terms and conditions set forth below.

3 1. Introduction and Scope. This Protective Order shall govern any and  
4 all manner and means of discovery, including entry onto land or premises, and  
5 inspection of books, computer records, documents, electronic files, testimony,  
6 information and tangible things, furnished by any party or non-party, that the  
7 Designating Party believes contains any trade secret, personal or other confidential  
8 research, development, marketing, technical, business, or financial information that  
9 has not been made public, subject to protection under the Federal Rules of Civil  
10 Procedure or other applicable law. Plaintiffs agree to the Protective Order to expedite  
11 document production, reserving all rights to challenge confidentiality designations.  
12 This designation shall apply regardless of the form in which the discovery material  
13 is kept or maintained and extends to any testimony or documents, including without  
14 limitation exhibits, copies, notes, abstracts, summaries, or analyses that reflect  
15 discovery material.

16 2. Limitation of Protective Order. This Protective Order is not intended  
17 to address discovery objections to produce, answer, or respond on the grounds of  
18 attorney-client privilege or work product immunity nor to preclude either party from  
19 seeking further relief or protective orders from the Court as may be appropriate under  
20 the Federal Rules of Civil Procedure or other applicable law.

1           3.     Confidentiality of Certain Documents or Information. A party or  
2 nonparty that produces information may claim confidential treatment for  
3 documents and information (and any portions or summaries thereof) that the party  
4 or nonparty reasonably believes constitutes or contains material that is particularly  
5 sensitive in nature, including but not limited to trade secrets, processes, operations,  
6 research, technical or development information or apparatus, production, financial,  
7 marketing, sales, shipments, or other information considered by the designating  
8 party to be commercially or personally sensitive, confidential, and/or proprietary to  
9 the person or the individual facility.

10           4.     “CONFIDENTIAL” Designation. Any party or nonparty that  
11 produces information in response to a discovery demand may identify confidential  
12 documents or information by designating such documents or information as  
13 “CONFIDENTIAL.” Such party or nonparty shall be referred to as the  
14 “designating party.”

15           5.     Confidentiality of Party’s Own Documents. This Protective Order has  
16 no effect upon, and shall not apply to, a party’s use or disclosure of its own  
17 “CONFIDENTIAL” information for any purpose, insofar as such confidentiality is  
18 reasonably maintained. Such disclosure shall not waive the protection of this  
19 Protective Order and shall not entitle other parties or their attorneys to disclose  
20 such information in violation of it.

1           6.     Prior or Public Knowledge. Nothing contained herein shall impose  
2 any restrictions on the use or disclosure by a party of documents or information  
3 designated “CONFIDENTIAL” that was obtained lawfully by such party  
4 independently of any proceedings in this action, or that:

5                 a.     was already known to such party by lawful means prior to  
6 acquisition from, or disclosure by, the other party in this action;

7                 b.     was already in the public realm;

8                 c.     is or becomes publicly known through no fault or act of such  
9 party;

10                d.     is rightfully received by such party from a third party which has  
11 authority to provide such information without restriction as to disclosure; or

12                e.     is independently developed by the recipient of the information  
13 without use of or reference to the information.

14           7.     Designation. The designation of information as “CONFIDENTIAL”  
15 for purposes of this Protective Order shall be made in the following manner by the  
16 party or nonparty seeking protection (“designating party”), and shall further be  
17 consistent with any applicable Local Rule of the United States District Court for  
18 the Eastern District of Washington:

19                a.     In the case of documents or discovery responses, by affixing the  
20 label “CONFIDENTIAL” at the time such documents are produced or served, or as

1 soon thereafter as the party or nonparty seeking protection becomes aware of the  
2 confidential nature of the information disclosed and sought to be protected  
3 hereunder. If such documents were produced by a nonparty, any party seeking  
4 protection other than the producing nonparty must also provide written notice to all  
5 parties of the relevant document numbers or other reasonable identification of the  
6 relevant information within ten (10) calendar days of receiving the information;

7           b.     In the case of depositions: (i) by a statement on the record, by  
8 counsel, during such deposition that the entire transcript or a portion thereof shall  
9 be designated as “CONFIDENTIAL” hereunder with reasons stated on the record  
10 and followed up in writing within ten (10) calendar days following the receipt of  
11 the transcript of the deposition by the designating party of the reasons therefor; or  
12 (ii) by written notice of such designation, with the reasons therefor, to counsel for  
13 all other parties and the court reporter within ten (10) calendar days following the  
14 receipt of the transcript of the deposition by the designating party. During a  
15 deposition, the deponent or his counsel, or any other counsel of record, may invoke  
16 the provisions of this Protective Order in a timely manner, giving adequate oral  
17 warning to counsel for the party or nonparty that the testimony about to be given is  
18 deemed “CONFIDENTIAL” by the designating party. The designating party shall  
19 have the right to exclude any person not entitled under this Protective Order to  
20 receive the “CONFIDENTIAL” information from the deposition. Unless

1 designated as “CONFIDENTIAL,” any confidentiality is waived after the  
2 expiration of the ten (10) day written notice period discussed above, under subpart  
3 (ii) of this paragraph, but during this ten (10) day period the deposition and  
4 transcript thereof shall be treated as confidential. The Parties may modify this  
5 procedure for any particular deposition or proceeding through agreement on the  
6 record at such deposition or proceeding or otherwise by written stipulation, without  
7 further order of the Court. If any information designated as “CONFIDENTIAL” is  
8 used during the course of a deposition, that portion of the deposition record  
9 reflecting such “CONFIDENTIAL” information shall be so labeled, and access  
10 thereto shall be limited pursuant to the other terms of this Protective Order. The  
11 time required to address questions of claimed confidentiality shall not be counted  
12 against the deposition time available to the non-designating party taking the  
13 deposition. The court reporter shall account for the amount of time it takes to  
14 designate documents or testimony as confidential; and

15 c. In the case of hearing testimony or argument, a party may  
16 disclose “CONFIDENTIAL” information upon consent of the designating party or  
17 permission of the Court. Should the designating party object to the disclosure of  
18 “CONFIDENTIAL” information, the designating party shall make the appropriate  
19 Motion to the Court pursuant to any applicable local rule. As the moving party, the  
20 burden of establishing the “CONFIDENTIAL” nature of the information so

1 designated and/or appropriateness of the designation shall be upon the designating  
2 party.

3 8. Access To “CONFIDENTIAL” Information. Information designated  
4 as “CONFIDENTIAL” shall be used solely in connection with and for purposes of  
5 this litigation between the parties. Information designated as “CONFIDENTIAL,”  
6 or copies or extracts therefrom and compilations and summaries thereof, may be  
7 disclosed, summarized, described, characterized, or otherwise communicated or  
8 made available in whole or in part only to the persons identified in the  
9 subparagraphs below. It is understood, however, that counsel for a party may give  
10 advice and opinions to his or her client based on his or her evaluation of  
11 information designated as “CONFIDENTIAL” produced by the opposing party  
12 provided that such rendering of advice and opinions shall not directly or indirectly  
13 reveal the content of such information except by prior agreement with opposing  
14 counsel.

15 a. Parties’ counsel of record in this action.

16 b. One (1) designated individual representative, separate from any  
17 counsel of record, from each named party in this action.

18 If necessary to make decisions regarding this litigation, such designated  
19 individual representative may provide CONFIDENTIAL information to an  
20 executive decisional body of a named party, provided members of the decisional

1 body receive, sign, and agree to be bound by a copy of this Protective Order and  
2 expressly indicate that agreement by completing and signing a copy of the  
3 declaration attached hereto as Exhibit A [at ECF No. 81] as provided below in  
4 paragraph 11. The executed Exhibit A shall be served on opposing counsel within  
5 10 days of receipt. This subparagraph is not intended to preclude any counsel of  
6 record, including counsel of record who are members of the named parties, from  
7 receiving CONFIDENTIAL information pursuant to subparagraph a.

8 c. Consulting experts as defined in Paragraph 10 herein and  
9 pursuant to the provisions regarding consulting experts herein;

10 d. The Court pursuant to Paragraphs 16 and 17 herein;

11 e. To any person designated by the Court in the interests of  
12 justice, upon such terms as the Court deems proper;

13 f. Court reporters employed in connection with this action;

14 g. Graphics or design services retained by counsel of record for a  
15 party for purposes of preparing demonstrative or other exhibits for deposition, trial  
16 or other court proceedings in this action, subject to and conditioned upon  
17 compliance with Paragraph 12 herein;

18 h. Non-technical jury or trial consulting services retained by  
19 counsel of record for a party, database managers and the like, subject to and  
20 conditioned upon compliance with Paragraph 12 herein; and



1           i.       To private mediators, arbitrators, and their staff to assist in the  
2 resolution of this matter conditioned upon compliance with Paragraph 12 herein.

3           9.       Custody of Designated Materials. All “CONFIDENTIAL”  
4 information covered by this Stipulation and Protective Order shall be kept in  
5 secure facilities at the offices of persons permitted to see such material and  
6 information as set forth in Paragraphs 8 of this Stipulation and Protective Order.

7           10.      Consultant Expert Defined. For purposes of this Order, a consultant  
8 expert shall be defined as a person, and his or her secretarial or similar assistants to  
9 whom it is necessary to disclose “CONFIDENTIAL” information for the purposes  
10 of this litigation, who is neither an employee or member of a party nor anticipated  
11 to become an employee or member, and who is retained solely as a bona fide  
12 consultant expert for purposes of this litigation, whether full or part time, by or at  
13 the direction of counsel of record for a party. Any consultant expert may be  
14 designated as an expert witness under the Federal Rules of Civil Procedure.

15           a.       Procedure For Consultant Expert Access To Confidential  
16 Information. The party seeking to have a Consultant Expert, as defined in  
17 Paragraph 10 herein, access information designated as CONFIDENTIAL shall  
18 require such Consultant Expert to sign a copy of the declaration attached hereto as  
19 Exhibit A [at ECF No. 81] prior to such access. On the date provided by rule and  
20 case schedule for disclosure of expert witnesses, the party who has disclosed

1 information designated as CONFIDENTIAL to any Consultant Expert shall  
2 provide to counsel for all other parties by electronic transmission or facsimile (1) a  
3 copy of all declarations completed and signed by Consultant Experts who are then  
4 designated as testifying experts and (2) the number of non-testifying Consultant  
5 Experts to whom the party has provided access to information designated as  
6 CONFIDENTIAL. If one party identifies the number of non-testifying Consultant  
7 Experts, the other party must similarly identify the number of non-testifying  
8 Consultant Experts it has used and provide proof of compliance with this Order.  
9 Upon request, either party shall disclose to the Court or a magistrate judge, if  
10 available, the declarations completed and signed by non-testifying Consultant  
11 Experts in order to verify compliance with this Order.

12 11. Procedure For Access To Confidential Information By Individuals  
13 From Named Parties. All persons listed in Paragraph 8(b) above may be given  
14 access to information designated as “CONFIDENTIAL,” provided that they first  
15 confirm their understanding and agreement to abide by the terms of this Protective  
16 Order by completing and signing a copy of the declaration attached hereto as  
17 Exhibit A [at ECF No. 81]. This declaration shall be served in a timely manner on  
18 the opposing Party, as provided in Paragraph 8(b).

19 12. Procedure For Access To Confidential Information Other Than By  
20 Consultants. All persons listed in Paragraphs 8(e), 8(g), 8(h) and 8(i) above may

1 be given access to information designated as “CONFIDENTIAL”, provided that  
2 they first confirm their understanding and agreement to abide by the terms of this  
3 Protective Order by completing and signing a copy of the declaration attached  
4 hereto as Exhibit A [at ECF No. 81].

5 13. Use By Witness Who Received Or Authored. Notwithstanding the  
6 Paragraphs above, any person may be examined as a witness at trial or during a  
7 deposition concerning any information designated as “CONFIDENTIAL” which  
8 that person had authored or been clearly identified as an addressee or copy  
9 recipient prior to and apart from this action. If a document or testimony makes  
10 reference to the actual or alleged statements or conduct of a deponent who is a  
11 potential witness and revealing information designated as CONFIDENTIAL in a  
12 deposition is necessary to understand such statements or conduct, counsel may  
13 reveal the document or testimony designated as CONFIDENTIAL to the potential  
14 witness during the deposition without waiving the CONFIDENTIAL designation.  
15 Before such disclosure, the witness shall sign Exhibit A [at ECF No. 81] and agree  
16 to be bound by the terms of this Order.

17 14. Challenge to Confidentiality Designation. If, within sixty (60)  
18 calendar days from the date that a “CONFIDENTIAL” designation is made, a party  
19 contends that the designating party has unreasonably or incorrectly designated  
20 certain documents or information as “CONFIDENTIAL,” the objecting party may

1 challenge the designation. A challenge may be made by serving on counsel for all  
2 parties a notice of objection, which shall identify with reasonable particularity the  
3 items as to which the designation is challenged, state the basis for each challenge,  
4 and propose a new designation for each item. The challenge must specifically state  
5 that the designating party has ten (10) calendar days to respond to the challenge.  
6 The challenged material shall be deemed redesignated as proposed unless, within  
7 ten (10) calendar days after service of the notice of objection, the designating party  
8 serves an opposing notice to maintain the original “CONFIDENTIAL”  
9 designation. If the party challenging the designation remains dissatisfied, it may  
10 request relief from the Court, with confidential portions thereof to be kept under  
11 seal, requesting that specifically identified documents, information, and/or  
12 deposition testimony be excluded from the provisions of this Stipulation and  
13 Protective Order. In responding to such a Motion, the designating party shall have  
14 the burden of proving that the challenged documents or information are rightfully  
15 afforded protection as “CONFIDENTIAL.” Furthermore, this paragraph shall not  
16 preclude any party from challenging a confidentiality designation as part of a  
17 particular pretrial motion, pretrial document designation or at trial.

18 15. Filing Confidential Information. To the extent that a party or  
19 nonparty believes it necessary to submit “CONFIDENTIAL” information in a  
20 document to be filed with the Court, that party or nonparty shall comply with the

1 requirements for filing material under seal in the United States District Court for  
2 the Eastern District of Washington, including the then-current Procedures for the  
3 Filing of Sealed and Ex Parte Documents For Civil Cases. If such information is  
4 attached to court filings, “compelling reasons” must be shown to seal records  
5 attached to a dispositive motion and “good cause” must be shown to seal records  
6 attached to a non-dispositive motion. *Kamakana v. City and County of Honolulu*,  
7 447 F.3d 1172, 1178-80 (9th Cir. 2006), or any applicable subsequent legal  
8 standard.

9 16. Use of Confidential Information in Court Proceedings. In the event  
10 that any information designated as “CONFIDENTIAL” is used in any court  
11 proceeding in this action or any appeal therefrom, such information shall not lose  
12 its status as “CONFIDENTIAL” through such use. Counsel for the Parties shall  
13 confer on such procedures as are necessary to protect the confidentiality of any  
14 information used in the course of any court proceedings, and shall incorporate such  
15 procedures in a document to be filed with the court, as is appropriate.

16 17. Counsel Bound by Protective Order. All counsel and their employees  
17 for the Parties who have access to information designated as “CONFIDENTIAL”  
18 acknowledge they are bound by this Order and submit to the jurisdiction of this  
19 Court for purposes of enforcing this Order.

20 18. No Prejudice. Entering into, agreeing to, and/or producing or

1 receiving information designated as “CONFIDENTIAL” or otherwise complying  
2 with the terms of this Protective Order shall not:

3 a. Prejudice in any way the rights of a party to seek a  
4 determination by the Court whether any information should be subject to the terms  
5 of this Protective Order;

6 b. Prejudice in any way the rights of a party to petition the Court  
7 for a further protective order relating to any purportedly “CONFIDENTIAL”  
8 information;

9 c. Prevent the parties to this Protective Order from agreeing in  
10 writing or on the record during a deposition or hearing in this action to alter or  
11 waive the provisions or protections provided for herein with respect to any  
12 particular information.

13 19. Inadvertent Production of Confidential Information. If a party  
14 inadvertently produces “CONFIDENTIAL” information without marking or orally  
15 designating it as such on the record, it may be disclosed to others until the  
16 receiving party becomes aware of the error, but in no case more than ten (10)  
17 calendar days from the date it could have been designated. As soon as the receiving  
18 party becomes aware of the inadvertent production, the information must be treated  
19 as if it had been timely designated under this Protective Order, and the receiving  
20 party must endeavor in good faith to obtain all copies, notes and synopses of the

1 document which it distributed or disclosed to persons not authorized to access such  
2 information by Paragraphs 8 and 9 above, as well as any copies, notes and  
3 synopses made by such persons.

4 20. Modification. This Protective Order may be modified and any matter  
5 related to it may be resolved by written agreement of the parties, or upon motion  
6 and entry of an Order of the Court.

7 21. Sanctions. The parties agree to be bound by the terms of this  
8 Protective Order pending its entry by the Court, or pending the entry of an  
9 alternative thereto which is satisfactory to all parties, and any violation of its terms  
10 shall be subject to sanctions, except for monetary sanctions, as the Court deems  
11 appropriate. Any party seeking any enforcement of this Protective Order in any  
12 jurisdiction or tribunal by injunction, temporary restraining order, or otherwise,  
13 shall not be required to post a bond.

14 22. Final Disposition. The provisions of this Protective Order shall,  
15 absent written permission of the producing party or further order of the Court,  
16 continue to be binding throughout and after the conclusion of this action, including  
17 without limitation any appeals therefrom. Within sixty (60) calendar days after  
18 receiving notice of the entry of an order, judgment or decree finally disposing of  
19 this action, including any appeals therefrom, all persons having received  
20 information designated "CONFIDENTIAL" hereunder shall return such

1 information to counsel for the producing party, or shall certify destruction thereof,  
2 including copies, and synopses and related notes incorporating such information to  
3 the extent reasonable and consistent with other language in this Protective Order.  
4 Counsel described in Paragraph 8(a) herein shall be entitled to retain court papers,  
5 deposition and trial transcripts, and attorney work product (including court papers,  
6 transcripts, and attorney work product that contain information designated as  
7 “CONFIDENTIAL”) provided that such counsel, and employees of such counsel,  
8 shall not disclose any such information designated as “CONFIDENTIAL”  
9 contained in such court papers, transcripts, or attorney work product to any person  
10 or entity except pursuant to court order or a written agreement with the producing  
11 party of the information. All “CONFIDENTIAL” information returned to the  
12 parties or their counsel by the Court likewise shall be returned or otherwise  
13 disposed of in accordance with this Paragraph. This Protective Order shall be  
14 construed consistent with LR 79.1.

15       23. Subpoena of Confidential Information in Another Action. If any party  
16 (a) is subpoenaed in another action or proceeding, (b) is served with a demand in  
17 another action or proceeding to which it is a party, or (c) is served with any other  
18 legal process by one not a party to this action, seeking information which was  
19 designated as “CONFIDENTIAL” by someone other than that party, the party shall  
20 give written notice within seven (7) calendar days of receipt of such subpoena,



1 demand, or legal process, to those who designated the information  
 2 “CONFIDENTIAL,” and shall refuse to produce the information designated as  
 3 “CONFIDENTIAL.” Should the person seeking access to the information take  
 4 action against the party or anyone else covered by this Protective Order to enforce  
 5 such a subpoena, demand or other legal process, the party shall respond by setting  
 6 forth the existence of this Protective Order. Nothing herein shall be construed as  
 7 requiring the party or anyone else covered by this Protective Order to challenge or  
 8 appeal any order requiring production of information covered by this Protective  
 9 Order, or to subject itself to any penalties for noncompliance with any legal  
 10 process or order, or to seek any relief from this Court.

11 24. Non-Parties to This Action. Any non-party producing documents,  
 12 tangible things, or testimony in this action who may reasonably be expected to  
 13 desire confidential treatment therefor may designate such documents, tangible  
 14 things, or testimony confidential pursuant to this Protective Order.

15 **IT IS SO ORDERED.**

16 The District Court Clerk is directed to enter this Order and provide copies to  
 17 counsel.

18 **DATED November 19, 2020.**



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
 UNITED STATES DISTRICT JUDGE

Respectfully submitted,

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